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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054966
Party	Plaintiff Scott R. Smith
Correspondence Address	SCOTT R SMITH 5714 FOLSOM BLVD, SUITE 140 SACRAMENTO, CA 95819 UNITED STATES scott@bizstarz.com
Submission	Motion for Sanctions
Filer's Name	David J. Cook (SBN # 060859)
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Signature	/djcl
Date	01/30/2012
Attachments	SCOTT SMITH 2ND PREFILING MOTION.pdf (41 pages)(3746621 bytes)

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 SCOTT R. SMITH, an individual,)

4 Petitioner,)

5 vs.)

6 COOK COLLECTION ATTORNEYS,)
7 P.L.C., a California corporation,)

8 Respondent.)

Cancellation No. 92054966
Registration No. 3257604

9 **COOK COLLECTION ATTORNEYS, P.L.C.'S**
10 **SECOND MOTION FOR ENTRY OF PREFILING ORDER**

11 COOK COLLECTION ATTORNEYS, P.L.C. ("Respondent") hereby moves the United
12 States Patent and Trademark Office ("TTAB") for the issuance of a prefiling order upon SCOTT
13 R. SMITH ("SMITH"), barring SMITH from filing any further Petitions to Cancel, challenge, or
14 litigate the trademarks of Cook Collection Attorneys, P.L.C. This motion replicates the prior
15 motion filed by Respondent with this court on 12/30/11.

16 The difference with this motion is that SMITH on 1/26/12 filed dismissals without
17 prejudice, to the below-listed proceedings pending before the TTAB:

18 1. PETITIONER'S WITHDRAWAL OF PETITION FOR CANCELLATION for Cancel
19 Registration No. 3414311.

20 2. PETITIONER'S WITHDRAWAL OF PETITION FOR CANCELLATION for Cancel
21 Registration No. 3257604.

22 The filings of the withdrawals, in the face of the pending motions to dismiss, for both of
23 these Petitions constitutes a concession that the motions to dismiss were well-taken and that the
24 motions would have been granted.

25 Under the law of malicious prosecution or Rule 11, the filing of a dismissal of a complaint
26 by a plaintiff in the face of a Rule 12(b)(6) motion, or state law demurrer, generally constitutes an
27 admission that the dismissal or demurrer is well taken. This rule likewise would apply before the
28 TTAB, and the inference is that the motions brought by Respondent to dispose of these Petitions

1 would have been granted, and granted without leave to amend. The fountain of case law which
2 supports this proposition arises out of malicious prosecution cases in which a plaintiff dismisses an
3 action. A court may examine the dismissal, particularly a voluntary dismissal, to see whether or
4 not the termination reflects upon the defendant's underlying innocence or liability. In *Rena v. Rigel*
5 *USA, Inc.* (Cal. Ct. App., July 21, 2010, B217613) 2010 WL 2840067, the court stated as follows:

6 "A voluntary dismissal may be an implicit concession that the dismissing party
7 cannot maintain the action and may constitute a decision on the merits. [Citations.]
8 "*It is not enough, however, merely to show that the proceeding was dismissed."*
9 [Citation.] The reasons for the dismissal of the action must be examined to
10 determine whether the termination reflected on the merits."* (*Eels v. Rosenblum*
11 (1995) 36 Cal.App.4th 1848, 1855.) "* *The key is whether the termination
12 reflects on the underlying defendant's innocence. [Citations.] If the resolution of the
underlying litigation "*leaves some doubt as to the defendant's innocence or
liability[, it] is *not* a favorable termination, and bars that party from bringing a
malicious prosecution action against the underlying plaintiff."* ([Citation], italics
in original.) "* *A termination [by dismissal] is favorable when it reflects "*the
opinion of someone, either the trial court or the prosecuting party, that the action
lacked merit or if pursued would result in a decision in favor of the defendant."

13 A court itself makes the determination to determine the culpability of the "prosecuting
14 party." Such a determination is a question of law, and not fact. *See Schaffer v. Donner*
15 *Management Co.* (Cal. Ct. App., Feb. 27, 2007, D047866) 2007 WL 593563, in which the court
16 stated:

17 "A voluntary dismissal without prejudice may be a favorable termination. (See
18 *Fuentes v. Berry* (1995) 38 Cal.App.4th 1800, 1808.) However, where the
underlying proceeding was not terminated on the merits, the reasons underlying the
19 termination must be examined to see if they reflect the opinion of the court or the
prosecuting party that the defendant was innocent. (See *Eells v. Rosenblum, supra*,
20 36 Cal.App.4th at p. 1855.) In determining whether the termination of the
underlying litigation reflects the underlying defendant's innocence, the focus is not
21 on the defendant's view of his innocence, but on the court or dismissing plaintiff's
opinion that the defendant is innocent. (*Ibid.*; *Haight v. Handweiler, supra*, 199
22 Cal.App.3d at p. 89.) If there is a conflict in the record regarding the circumstances
explaining the dismissal, the determination of the reasons is a question of fact.
23 (*Fuentes v. Berry, supra*, 38 Cal.App.4th at p. 1808.) If the factual circumstances of
the dismissal are undisputed, the issue of favorable termination is a question of law.
24 (*Pattiz v. Minye, supra*, 61 Cal.App.4th at p. 826.)"

25 A dismissal without prejudice likewise may constitute a concession that the underlying
26 case was meritless, as determined by the court. *See Golden West Builders, Inc. v. Kotic* (Cal. Ct.
27 App., Aug. 11, 2010, B217206) 2010 WL 3156541, in which the court stated:

28 "Generally, "*a voluntary dismissal, though expressly made "*without prejudice,"*
is a favorable termination which will support an action for malicious prosecution.

1 [Citations.]”* (*MacDonald v. Joslyn* (1969) 275 Cal.App.2d 282, 289.) That is
2 because “[a] voluntary dismissal may be an implicit concession that the dismissing
3 party cannot maintain the action and may constitute a decision on the merits.”*
4 (*Eells v. Rosenblum* (1995) 36 Cal.App.4th 1848, 1855.) To determine whether the
5 voluntary dismissal reflects on the merits, the court must examine the reasons for
6 the dismissal. (*Ibid.*) The dismissal is a termination on the merits “* “if it reflects
7 the opinion of either the court or the prosecuting party that the action would not
8 succeed.”* [Citation.]”* (*Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 27.)

9 There is no merit to Kotick's contention that the trial court's determination of
10 “*favorable termination”* was improper, in that it was made on the basis of an
11 inference, rather than admissible evidence.”

12 In both motions to dismiss, Respondent demonstrated that Petitioner lacked the slightest
13 standing and that the purpose of these Petitions was to coerce Respondent to abandon
14 representation of EMI on the grounds that Respondent would face the threat of forfeiting valuable
15 real property, i.e. Squeeze Trademark and the COOK Trademark, and expend enormous amounts
16 of time in defending its trademarks. This court can independent make these findings, the effect of
17 which would be to further buttress the motion for a prefiling order, along with other sanctions.

18 Standing is more than a technical defense, such as the statute of limitations. Standing goes
19 to the core of any litigation in which standing protects parties from litigation brought by
20 interlopers, strangers, or those only with a peripheral interest, but an ulterior claim. Standing
21 protects parties from litigation sought by others to further their political, social, religious, or
22 personal goals. Article III Constitutionally mandates that a party have standing to justify the
23 pendency of a “case or controversy.” As a Constitutional imperative, the federal courts can only
24 adjudicate claims brought by parties who have a “stake in the outcome,” rather than those parties
25 who seek to use a proceeding to further non-judicial goals, such as this case, to thwart enforcement
26 of a judgment arising out of another court.

27 **I. PREFILING ORDER.**

28 In Cancellation No. 92054966 (Squeezebloodfromturnip Trademark, hereinafter “Squeeze
Trademark”), Respondent sought a prefiling order, commencing at page 9, lines 25-28, and
continuing through to page 24. Respondent incorporates this motion by reference. This motion is
still pending before this court.

II. RULE 11 MOTIONS SURVIVE THE FILING OF A DISMISSAL.

A Rule 11 motion will survive the filing of the dismissal of a complaint as the court retains jurisdiction to rule on the Rule 11 motion, even if the underlying action is dismissed. This has always been the state of the law, as laid down by *Cooter & Gell v. Hartmarx Corp.* (1990) 496 U.S. 384, 397-98 [110 S.Ct. 2447, 2457, 110 L.Ed.2d 359]. In that case, the Supreme Court made it abundantly clear that a dismissal does not deprive the court of jurisdiction to rule on a Rule 11 motion. The court stated as follows:

“Both Rule 41(a)(1) and Rule 11 are aimed at curbing abuses of the judicial system, and thus their policies, like their language, are completely compatible. Rule 41(a)(1) limits a litigant's power to dismiss actions, but allows one dismissal without prejudice. Rule 41(a)(1) does not codify any policy *398 that the plaintiff's right to one free dismissal also secures the right to file baseless papers. The filing of complaints, papers, or other motions without taking the necessary care in their preparation is a separate abuse of the judicial system, subject to separate sanction. As noted above, a voluntary dismissal does not eliminate the Rule 11 violation. Baseless filing puts the machinery of justice in motion, burdening courts and individuals alike with needless expense and delay. Even if the careless litigant quickly dismisses the action, the harm triggering Rule 11's concerns has already occurred. Therefore, a litigant who violates Rule 11 merits sanctions even after a dismissal. Moreover, the imposition of such sanctions on abusive litigants is useful to deter such misconduct. If a litigant could purge his violation of Rule 11 merely by taking a dismissal, he would lose all incentive to “*stop, think and investigate more carefully before serving and filing papers.”* Amendments to Federal Rules of Civil Procedure, 97 F.R.D. 165, 192 (1983) (Letter from Judge Walter Mansfield, Chairman, Advisory Committee on Civil Rules) (Mar. 9, 1982).”

Other cases have likewise consistently held that Rule 11 motions are viable notwithstanding the dismissal of the underlying complaint. *See Nelson v. Napolitano*, 657 F.3d 586; *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90; *Schering Corporation and Key Pharmaceutical, Inc. v. Vitarine Pharmaceuticals, Inc. And Major Pharmaceuticals Corp.*, 889 F.2d 490; *In re Bath and Kitchen Fixtures Antitrust Litigation*, 535 F.3d 161; and *Aadvark Child Care and Learning Center, Inc. v. The Township of Concord, et al.*, 288 Fed.Appx. 16, 2008 WL 2916305 (C.A.3 Pa.)).

Therefore, this court can still act upon the pending motion for a prefiling order.

III. WHAT ARE THE IMPLICATIONS OF THE WITHDRAWALS IN THE FACE OF THE MOTION FOR A PREFILING ORDER?

These withdrawals constitute dismissals without prejudice of the two Petitions filed before the TTAB and are filed in the face of motions to dismiss the Petitions on the merits. These

1 withdrawals constitute an admission that the Petitions are meritless based upon the grounds as
2 raised in the motions to dismiss.

3 SMITH has now filed a total of four meritless Petitions, two of which were lodged against
4 Entrepreneur Media, Inc. and two against EMI's collection counsel. This really amounts to a total
5 of four meritless Petitions to Cancel, in which the two Petitions against EMI's trademarks were
6 dismissed with prejudice, and the two Petitions against EMI's counsel were abandoned and
7 dismissed in the face of a stout motion to dismiss.

8 The court therefore has before it four separate Petitions whose sole purpose is to injure,
9 damage, and effectively terrorize EMI and its lawyers by attempting to destroy their valuable
10 property. SMITH has lost his case at the Ninth Circuit in that on 1/10/12, the Ninth Circuit
11 rendered its Memorandum opinion affirming the judgment of nondischargeability. SMITH's
12 conduct in attacking the trademarks of EMI's lawyer could only be interpreted as an attempt of
13 coercion and distraction, hoping to frighten off the lawyer for the fear of losing world class
14 intellectual property.

15 This case is extremely close to the facts in *Molski v. Evergreen Dynasty Corp.*, 500 F.3d
16 1047 (9th Cir. 2007). That case revolved around an ADA litigant filing frivolous actions against
17 local restaurants. The District Court issued a prefiling order predicated upon contrived claims.
18 (Pages 1053-1054) The court upheld the prefiling order based upon the authority allowed under 28
19 U.S.C. § 1651(a) (Page 1057). The court cited multiple factors (page 1058) generally consisting of
20 a history of vexatious, harassing or duplicative lawsuits, a bad faith motive, whether the litigant is
21 represented by counsel, needless expense, and whether or sanctions would be adequate. (Page
22 1058). The court noted that frivolous litigation also arises from claims which are totally false or
23 grossly exaggerated. (Page 1061) As indicated in the original motion for prefiling order,
24 Respondent has met this burden.

25 The filing of these withdrawals, however, further buttresses Respondent's entitlement to a
26 prefiling order. The withdrawals constitute a concession that the dismissal motions would be well
27 taken and that the court, if hearing the dismissal motions, would have necessarily granted relief.
28 Such relief would have constituted a dismissal with prejudice. The dismissals themselves have

1 sought to serve SMITH's ultimate motive of forcing his adversaries to expend their time and
2 money in needless actions, and otherwise accrue great expense which would otherwise make
3 unattractive enforcement against SMITH himself. What SMITH has done is made enforcement
4 against him a very expensive and difficult proposition in that SMITH responds by causing the
5 judgment creditor, and now his lawyer, to spend money and time in defending their own property
6 interest. As indicated by the Declaration of David J. Cook, approximately 20 plus hours were spent
7 in filing the two dismissal motions. The Cook law firm spent significant sums of monies in
8 protecting its trademark rights. More time is being spent in filing these papers. The Cook law firm
9 now has sunk over \$10,000 or more in time in dealing with SMITH's frivolous Petitions. If
10 SMITH's goal was to cause financial loss as a price to pay in the enforcement of judgment against
11 SMITH, SMITH has succeeded beyond his wildest dreams. If his strategy is to make collection of
12 the judgment against him painful and expensive, he has succeeded.

13 SMITH admittedly is an extortionist, as his emails demanding money, all of which are set
14 forth on pages 19 and 20 of the original prefiling motion, demonstrate that the purpose of his
15 Petitions was to demand payment of money. SMITH specifically states on December 29, 2011, the
16 following:

17 " . . . So I am willing to withdraw my cases against your trademarks if you agree to
18 abandon them and to provide reasonable compensation for my time, etc." (Email
dated December 29, 2011 and marked *Exhibit "S"* to original motion.)

19 This email came as a shock, in that the demand for money based upon a frivolous filing,
20 coupled with a demand to abandon valuable property, is the precise type of criminal conduct which
21 would be an offense under Title 18 of this Code. Respondent, of course, rejected this claim, which
22 now has led to the withdrawal of these Petitions.

23 The court is faced with four failed Petitions, two of which were filed against EMI's
24 trademarks in which the Petitions were dismissed with prejudice, and now the two Petitions filed
25 against EMI's lawyers which were withdrawn. The motive of filing these Petitions is to injure EMI
26 and its lawyers, by accruing enormous expense and effort. SMITH only displays subjective and
27 objective bad faith in prosecuting these Petitions, and that they have served no purpose. In all of
28 these cases, SMITH has not demonstrated the slightest standing. SMITH is not represented by

1 counsel and cannot blame counsel for “bad advice.” EMI and Respondent have been unduly
2 burdened by these Petitions, not only for the expense incurred, but by the aggravation and time
3 accrued in defense of these Petitions. A prefilng order is the appropriate remedy, as monetary
4 sanctions are useless. These are the perfect facts which justify a prefilng order.

5 **IV. WHY SHOULD THE TTAB ISSUE A PREFILING ORDER,**
6 **GIVEN THE DISMISSALS OF THESE PROCEEDINGS?**

7 *Molski v. Evergreen Dynasty Corp.* makes it very clear that prefilng orders are exceedingly
8 rare and require an enormous showing. They are not lightly granted and are “extreme.” (Page
9 1057) A prefilng order requires a “cautious review of the pertinent circumstances.” (Page 1057)
10 Stated in the vernacular, a prefilng order is a tall order.

11 This is the case for a prefilng order. This case is very close to the vindictive actions of
12 those who seek to oppress parties from invoking their Constitutional rights out of the civil rights
13 era, the action of criminals seeking to intimidate witnesses, and the actions of the malicious
14 seeking to frighten, coerce, or deter parties or their lawyers from prosecuting righteous claims.
15 Filing frivolous Petitions to destroy valuable intellectual property, such as trademarks, is an act of
16 intimidation and a threat. This court should view this conduct by SMITH as an act of
17 maliciousness and threat of destruction which seeks to undermine the administration of justice and
18 deter others from free access to the courts. Letting SMITH “off the hook” lets SMITH profit from
19 his maliciousness. SMITH withdrew his Petitions because he thought that he could escape the
20 rigors of responding to the motion for a prefilng order. That would make SMITH, in his mind, the
21 victor. This court ought to reject this strategy, and bar SMITH from any further filings.

22 **V. CONCLUSION.**

23 Both EMI and Respondent have been the target of expensive and protracted Petitions filed
24 in this court seeking to destroy EMI and Respondent’s valuable personal property. All of these
25 Petitions have been meritless and the Petitions against EMI by the court have been already
26 dismissed. SMITH withdrew the two Petitions against Respondent. Once the court finds that these
27 Petitions have been meritless at all times, and brought in subjective bad faith, this court can enter a
28 prefilng order barring any further relief sought by SMITH.

1 DATED: January 30, 2012

COOK COLLECTION ATTORNEYS

2 By: _____

DAVID J. COOK

Attorneys for Respondent

COOK COLLECTION ATTORNEYS, P.L.C.

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1 **CERTIFICATE OF SERVICE**

2 SCOTT R. SMITH
3 5714 Folsom Blvd., Suite 140
4 Sacramento, CA 95819

5 I declare:

6 I am employed in the County of San Francisco, California. I am over the age of eighteen
7 (18) years and not a party to the within cause. My business address is 165 Fell Street, San
8 Francisco, CA 94102. On the date set forth below, I served the attached:

9 **COOK COLLECTION ATTORNEYS, P.L.C.'S SECOND MOTION FOR ENTRY
10 OF PREFILING ORDER**

11 **DECLARATION OF DAVID J. COOK, ESQ. IN SUPPORT OF SECOND MOTION
12 FOR ENTRY OF PREFILING ORDER**

13 on the above-named person(s) by:

14 XXX (BY MAIL) Placing a true copy thereof, enclosed in a sealed envelope with postage
15 thereon fully prepaid, in the United States mail at San Francisco, California, addressed to the
16 person(s) served above.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on January 30, 2012 at San Francisco, California.

19 
20 Matthew Baron
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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 SCOTT R. SMITH, an individual,)

4 Petitioner,)

5 vs.)

6 COOK COLLECTION ATTORNEYS,)
7 P.L.C., a California corporation,)

8 Respondent.)

Cancellation No. 92054966
Registration No. 3257604

9 **DECLARATION OF DAVID J. COOK, ESQ. IN SUPPORT OF**
10 **SECOND MOTION FOR ENTRY OF PREFILING ORDER**

11 I, DAVID J. COOK, hereby declare and state as follows:

12 1. I am one of the Respondent in the above-entitled action, am duly authorized to practice
13 before all courts in the State of California, and am familiar with the facts and circumstances in this
14 action.

15 2. Respondent was served with the two Petitions filed by Petitioner SCOTT R. SMITH
16 ("SMITH") seeking to cancel Respondent's Squeezebloodfromturnip Trademark, Serial No.
17 77020236, Registration No. 3257604, and COOK Trademark, associated with Cook Collection
18 Attorneys, Serial No. 77244334, Registration No. 3414311. Respondent views these matters
19 extremely seriously. First, Squeezebloodfromturnip.com is part of Respondent's marketing
20 campaign and is a Trademark for T-shirts. Attempting to invalidate the trademark attached to the
21 T-shirts would undermine a substantial financial commitment, but moreover, disrupt the operation
22 of Respondent's law practice.

23 3. More egregious is the attempt to unwind the COOK Trademark associated with Cook
24 Collection Attorneys. This would strike at the heart of Respondent's public presentations,
25 participation in the Internet, and ultimately seek to destroy Respondent's law firm. In effect,
26 Petitioner sought to blemish, if not destroy, Respondent's law firm by depriving Respondent's law
27 firm of the exclusivity to use the name COOK in association with Cook Collection Attorneys.
28

1 4. As a result thereof, Respondent needed to take prompt action to respond to both of these
2 Petitions. Respondent calculated that the purpose of these Petitions was to compel Respondent to
3 hire an attorney at an enormous expense. This is evidenced by a series of emails, true and correct
4 copies which are attached hereto marked *Exhibits "A" through "F,"* in which the pertinent
5 portions state as follows:

6 "Your letter dated December 21, 2011 suggests that you have retained legal counsel
7 to help defend against my trademark case(s) against you and your firm. If so, your
8 attorney is encouraged to contact me if they want to discuss my cases or possible
9 solutions." (Email of December 27, 2011, marked Exhibit "A")

10 "I will also assume that you have NOT retained legal counsel for these cases, or are
11 refusing to disclose the name of your attorney." (Email of December 28, 2011,
12 marked Exhibit "B")

13 "And you've apparently been unable to find an attorney who would agree to take
14 your cases, which I think is because ethical trademark attorneys can't agree to
15 represent you because the facts are so bad for you and you're insisting on making
16 desperate and knowingly frivolous arguments that may lead to Rule 11 violation."
17 (Email of December 28, 2011, marked Exhibit "C")

18 "The more you learn about trademark law and talk to trademark attorneys, the more
19 you should realize that you're fighting an expensive and time-consuming battle
20 over trademarks you're likely going to lose anyway." (Email of December 29, 2011,
21 marked Exhibit "D")

22 "It seems that you're fighting such a losing battle because you're very stubborn and
23 are taking everything too personally. You're surely not making good legal or
24 business sense, or following the advice of a well-reasoned trademark attorney."
25 (Email of January 1, 2012, marked Exhibit "E")

26 "I've notified scores of attorneys throughout the country that use the "Cook"
27 surname about my cases against your improper trademarks. Many of them
28 specialize in trademark or bankruptcy law, so you can imagine what they intend to
do about your "Cook" and "Squeezeblood" trademarks." (Email of January 6, 2012,
marked Exhibit "F")

SMITH repeatedly inquires whether Respondent has hired an attorney. The fact that Respondent
would be forced to hire an attorney would be an enormous victory for SMITH in burdening
Respondent with the expenses of paying third party legal fees by which to protect Respondent's
property.

5. The impetus of these emails and the motive behind them is to intimidate Respondent
into the possession that he is compelled to hire a lawyer to defend his property interest, lest
Respondent suffer the loss the trademarks, given the ostensible inability to represent himself.

1 Shouting at Respondent to “hire a lawyer” boils down to attempting to frighten Respondent into
2 hiring a lawyer so Respondent can spend himself into the grave.

3 6. Intellectual property lawyers, and more specifically intellectual property lawyers
4 defending patents, trademarks and copyrights come at an enormous premium. Hourly rates
5 between \$500-\$1,000 are common. Moreover, an outside attorney needs time to become familiar
6 with the facts, which are substantial in this case, and further increase a potential investment by
7 Respondent in engaging outside counsel. Moreover, outside counsel, unfamiliar with the
8 underlying facts, would necessarily seek to review all of the prior pleadings, papers, court
9 decisions, and the like, leading to a 20-40 hour investment of time. From Respondent’s viewpoint,
10 the motive driving Petitioner to file these two Petitions was not necessarily victory, but rather that
11 Petitioner would force Respondent to spend tens of thousands of dollars, rendering continuing
12 representation of Entrepreneur Media, Inc. (“EMI”) extremely burdensome, or for that matter, a
13 net loss. In short, the purpose of the filing of the Petitions was to “drive Respondent into the
14 ground.”

15 7. Respondent unfortunately over the years is familiar with the prospect that angry,
16 disgruntled and disheartened adverse parties, suffering a multi-million dollar judgment, will lash
17 out at the creditor’s lawyer, by filing lawsuits and the like. This unfortunately is endemic and part
18 of the enforcement of judgment practice. Here, SMITH precisely sought to destroy Respondent’s
19 representation of EMI by attempting to force Respondent to hire a third party lawyer.

20 8. Respondent therefore rejected this prospect and took on for himself “self-
21 representation.” Needless to say, the common adage is that lawyers are extremely ill-advised to
22 represent themselves, for fear of making a “foolish” error. See *Trope v. Katz*, 11 Cal.4th 274, 45
23 Cal.Rptr.2d 241, 902 P.2d 259 (1995), in which the court barred Pro Per attorneys. Respondent
24 was willing to take that risk.

25 9. Prior to the two Petitions filed by the Petitioner, Respondent had never practiced before
26 the USPTO TTAB. Moreover, in all of the prior trademark filings, Respondent hired Townsend
27 Townsend & Crew and Mark Gorelnik as counsel to perform the expert services in filing a
28 trademark. However, in this case, Respondent did everything possible to avoid the burden of

1 unnecessary third party expense. This forced Respondent to spend a significant period of time in
2 becoming familiar with the practices and procedures before the TTAB, reading the local rules,
3 becoming familiar with infringement practices and procedures, and moreover, becoming familiar
4 with standard defenses in cancellation actions. Respondent therefore not only read and reviewed
5 the rules, the applicable case law, but moreover, the papers and pleadings filed by EMI in fending
6 off the prior two Petitions. EMI's lawyer is Mark Finkelstein of Jones Day.

7 10. Preparing the two responses to the Petitions to Cancel were particularly time-
8 consuming in that Respondent had a "learning curve," as any lawyer would have, in filing papers
9 in a new and different tribunal. Respondent spent 20 hours in this process. Matthew Baron, another
10 lawyer, spent another 5 hours in aiding and assisting in the filing of the matter, review of the
11 TTAB rules, and moreover, legal review and research. Robert J. Perkiss spent another 3 hours
12 likewise in review and research of the matter. Even this declaration has become a time-consuming
13 matter.

14 11. The time of David J. Cook, Matthew Baron and Robert J. Perkiss are not compensable
15 in this case. Monetary sanctions were not sought, in that Petitioner is now burdened with a
16 judgment in the \$1.5M range plus, including the accrual of interest, and therefore would not be
17 responsive to nor pay monetary sanctions.

18 12. SMITH's filing of the two Petitions to Cancel forced Respondent to trademark
19 CookLegalServices, and moreover, capture various domain names to avoid the metastasizing of
20 the Petitioner's strategy. This has turned out to be an significant investment of time and effort in
21 that Matthew Baron took the laboring oar in the filing of the trademark registrations, and all of the
22 groundwork to facilitate its successful filing. This took another 5 hours.

23 13. In short, the total investment of time is 33 hours, or more. This is an approximation.

24 14. To the extent that Petitioner sought to "work Respondent to death" in order to protect
25 Respondent's property, Petitioner has succeeded beyond his wildest dreams. Petitioner made
26 Respondent and two lawyers in Respondent's office "run around" in order to protect Respondent's
27 property rights. The nature of trademark petitions is that they are by their very nature "life and
28 death matters." Respondent, like so many other trademark registrants, promote their goods and

1 services based upon their trademark and in which the trademark becomes the cornerstone of their
2 identity and presence in the marketplace. Any attack on a trademark necessarily would be met with
3 enormously stout resistance, as the case here. SMITH, by the filing of his two frivolous Petitions
4 to Cancel, and even in the face of the withdrawal, necessarily caused the damage that SMITH
5 intended, as he did to EMI when he infringed on its trademark, which was to cause Respondent a
6 significant financial loss without the slightest prospect of recompense. If SMITH intended to
7 involuntarily burden Respondent with the thankless and unremunerative task of defending
8 Respondent's trademarks, SMITH succeeded.

9 15. Now, Petitioner, seeking that his Petitions are meritless, seeks to dismiss the Petitions,
10 having achieved his victory of "driving into the ground" Respondent's law office. This is not only
11 unfair, but ultimately egregious. The TTAB, along with every other tribunal, facilitates the
12 adjudication of legitimate disputes by and among parties. Here, Petitioner seeks to avail himself of
13 TTAB as a weapon of coercion, pain, and monetary oppression, directed against counsel for his
14 judgment creditor.

15 16. As a result, once the court finds SMITH's motives as set forth herein, this court
16 therefore can bar SMITH from filing any other Petition, absent a prefiling order, on the basis that
17 SMITH has engaged in deliberate, wrongful and vexatious conduct. Petitioner should be labeled as
18 a vexatious litigant, and subject to a prefiling order. Respondent requests that this court enter a
19 prefiling order to protect Respondent from continuing acts of coercion and oppression, lest SMITH
20 continue this campaign endlessly.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on January 30, 2012, at San Francisco, California.

24
25 
26 _____
27 DAVID J. COOK, ESQ.

28 F:\USERS\DJCNEW\cook trademark.prefiling2

EXHIBIT "A"

David J. Cook

From: Scott Smith [scott@bizstarz.com]
Sent: Tuesday, December 27, 2011 11:34 PM
To: cook@squeezebloodfromturnip.com
Cc: kjen@cookcollectionattorneys.com
Subject: Smith vs Cook, TTAB cases

David,

Your letter dated December 21, 2011 suggests that you have retained legal counsel to help defend against my trademark case(s) against you and your firm. If so, your attorney is encouraged to contact me if they want to discuss my cases or possible solutions.

The information and materials you recently sent me seem to conflict with your previous claims to the trademark office. But you or your attorney are welcome to send me any information that you believe disproves any of my allegations. If you can provide convincing enough proof, I will consider withdrawing the relevant allegations, or if warranted, both of my cases before the start of the discovery periods. But if you are unable to provide such information, I will continue to believe that's because such evidence does NOT exist.

For example, feel free to send me alleged evidence of:

1. your t-shirt sales (or giveaways)
2. names of persons or organizations that have purchased (or have been given) a "squeezeblood" t-shirt, and when
3. your plans to use the "squeezeblood" mark as claimed
4. the squeezeblood mark not being immoral or scandalous to a substantial composite of the general public
5. you policing the squeezeblood mark (i.e. cease-and-desist letters to the seller of the **"YOU CANNOT SQUEEZE BLOOD OUT OF A TURNIP"** t-shirts available for sale on cafePress.com)
6. the squeezeblood mark not being used for your collections services
7. the Cook mark being substantially and exclusively used by you in commerce for at least five years
8. the Cook mark acquiring secondary meaning and being distinctive to you
9. you policing the Cook mark (i.e. cease-and-desist letters to **Cook Legal Services, LLC** of Atlanta)
10. the Cook surname not being shared by multiple individuals and attorneys in multiple U.S. states and cities
11. no other person, firm, corporation, or association not having the right to use the Cook mark in commerce for "legal services"

However, I am very confident about my cases. So your efforts to threaten and intimidate me into dismissing my cases are not only unprofessional, they wreak of desperation.

You're also making the potentially very costly mistake of thinking I am your trademark "problem." Actually, your trademark problems (plural) are numerous, extend well beyond me, and were caused by you, not me. Your trademark problems include:

1. the numerous attorneys and law firms with the surname "Cook" who are now finding out about your claims of having exclusive rights to the Cook surname for "legal services"
2. the debtor attorneys, agencies and organizations that are now finding out about your highly offensive squeezeblood mark
3. the fact that the trademark office (and most people) will agree with most if not all of the allegations contained in my cases
4. the many reporters that are now finding out about your scandalous squeezeblood mark, and your outrageous

claim that no one else can use the Cook surname for legal services, except you

In other words, unless you do the wise thing and agree to expressly abandon your ill-gotten trademarks, you will soon be facing serious legal attacks from numerous attorneys and organizations over your trademarks. So even if you are somehow able to convince the trademark office to grant you summary judgments against all of my allegations, and against both cases, you will still be facing numerous (and much better resourced) legal attacks from many others if you refuse to do the right thing and expressly abandon your highly controversial and improper trademarks.

Hope this info helps. Let me know if you have any questions or are willing to expressly abandon your trademarks.

Best regards,

Scott Smith
916-453-8611

--

Scott Smith, President
BizStarz
5714 Folsom Blvd, Suite 140
Sacramento, CA 95819 (USA)
Ph: 916.453.8611 • Fax: 916.453.1103

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EXHIBIT "B"

David J. Cook

From: Scott Smith [scott@bizstarz.com]
Sent: Wednesday, December 28, 2011 1:42 AM
To: cook@squeezebloodfromturnip.com
Cc: kjen@cookcollectionattorneys.com
Subject: Re: Smith vs Cook, TTAB cases

David,

Based on your terse email, I will assume that it IS accurate and legally permissible for me to state that you were UNable to provide ANY of the evidence mentioned in my email. I will also assume that you have NOT retained legal counsel for these cases, or are refusing to disclose the name of your attorney.

Thank you.

Scott
916-453-8611

David J. Cook wrote:
See you in court
Sent from my Verizon Wireless BlackBerry

From: Scott Smith <scott@bizstarz.com>
Date: Tue, 27 Dec 2011 23:33:58 -0800
To: <cook@squeezebloodfromturnip.com>
ReplyTo: scott@bizstarz.com
Cc: <kjen@cookcollectionattorneys.com>
Subject: Smith vs Cook, TTAB cases

David,

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3. your plans to use the "squeezeblood" mark as claimed
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6. the squeezeblood mark not being used for your collections services
7. the Cook mark being substantially and exclusively used by you in commerce for at least five years
8. the Cook mark acquiring secondary meaning and being distinctive to you
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3. the fact that the trademark office (and most people) will agree with most if not all of the allegations contained in my cases
4. the many reporters that are now finding out about your scandalous squeezeblood mark, and your outrageous claim that no one else can use the Cook surname for legal services, except you

In other words, unless you do the wise thing and agree to expressly abandon your ill-gotten trademarks, you will soon be facing serious legal attacks from numerous attorneys and organizations over your trademarks. So even if you are somehow able to convince the trademark office to grant you summary judgments against all of my allegations, and against both cases, you will still be facing numerous (and much better resourced) legal attacks from many others if you refuse to do the right thing and expressly abandon your highly controversial and improper trademarks.

Hope this info helps. Let me know if you have any questions or are willing to expressly abandon your trademarks.

Best regards,

Scott Smith
916-453-8611

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Scott Smith, President
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EXHIBIT "C"

David J. Cook

From: Scott Smith [scott@bizstarz.com]
Sent: Wednesday, December 28, 2011 6:08 PM
To: David J. Cook
Cc: cook@squeezebloodfromturnip.com; kjen@cookcollectionattorneys.com; perkiss@cookcollectionattorneys.com; dunn@cookcollectionattorneys.com; baron@cookcollectionattorneys.com
Subject: Re: Smith vs. Cook, TTAB cases

David,

While perhaps not a formal admission, your inability to deny the allegations contained in my cases, or provide credible evidence to disprove my allegations, certainly supports my cases and strongly suggests that you won't be able to defeat my trademark cases (especially not with a motion for summary judgment). It's also why even you will eventually have to realize that you would be a fool to file a malicious prosecution case against me (not only would it fail, it could expose you to Rule 11 claims). And you've apparently been unable to find an attorney who would agree to take your cases, which I think is because ethical trademark attorneys can't agree to represent you because the facts are so bad for you and you're insisting on making desperate and knowingly frivolous arguments that may lead to Rule 11 violations. You obviously chose the squeezeblood mark because of its scandalous nature, and Cook is your surname. I'd be very surprised if you were ever bold or fool enough to send cease-and-desist letters to attorneys or law firms telling them that they can't use the Cook surname in commerce because you own exclusive rights to the Cook surname for legal services. Don't worry, I won't be holding my breath waiting for you to provide copies of any squeezeblood or Cook cease-and-desist letters. But you're encouraged to send them to me if you can prove me wrong.

Best regards,

Scott Smith
916-453-8611

David J. Cook wrote:
Mr. Smith,

Whether we respond or do not respond is not an admission. The fact that we decline to "deny" anything does convert whatever statements you utter into an admission. We are not going to dignify, or elevate to discourse, any of your claims, demands, allegations or accusations.

I will attach this email to our motions. Don't hesitate in you stream of unilateral communications.

From: Scott Smith [mailto:scott@bizstarz.com]
Sent: Wednesday, December 28, 2011 3:59 PM
To: David J. Cook
Cc: cook@squeezebloodfromturnip.com; kjen@cookcollectionattorneys.com; perkiss@cookcollectionattorneys.com; dunn@cookcollectionattorneys.com; baron@cookcollectionattorneys.com
Subject: Re: Smith vs Cook, TTAB cases

David,

Thanks for the heads up. I believe that including my emails in your motion will actually help me. Also, you noticeably were NOT able to deny that due to my very strong cases against EMI's fraudulent expo marks, EMI decided to abandon them.

And good luck trying to prove in your motion that no genuine issues of material fact in dispute exist, and that you are entitled to judgment as a matter of law (and in a light most favorable to the nonmoving party, me).

Thank you.

Scott Smith
916-453-8611

David J. Cook wrote:
Mr. Smith,

I am adding this email to our pending motion.

David J. Cook

From: Scott Smith [<mailto:scott@bizstarz.com>]
Sent: Wednesday, December 28, 2011 2:50 PM
To: cook@squeezebloodfromturnip.com
Cc: kjen@cookcollectionattorneys.com; perkiss@cookcollectionattorneys.com; dunn@cookcollectionattorneys.com; baron@cookcollectionattorneys.com
Subject: Re: Smith vs Cook, TTAB cases

David,

For the record, and as you surely know from your communications with EMI, they DID abandon their *fraudulent* Entrepreneur Expo and Entrepreneur magazine Small Business Expo marks as a direct result of my trademark office cases. EMI intentionally failed to renew their Small Business Expo mark after I filed my case, so it was automatically cancelled by the trademark office. And EMI abandoned their claims to the Entrepreneur Expo mark soon after I filed my most recent case, and have ceased including it as one of their marks in their new cases.

You of course may continue to try and mislead people about my successful attacks against EMI's *fraudulent* expo marks, but I will do my best to make sure people know that you are intentionally trying to mislead them. I understand that you're probably too stubborn and emotional to do so, but if you are a wise and rational person, you will abandon your fraudulent marks. No matter what happens with my cases, they are permanently linked to your trademarks and will always be available for the world to see, particularly anyone you unwisely go after claiming superior trademark rights against.

Hope this info helps. Let me know if you have any questions or dispute that EMI abandoned their expo marks, and did so as a direct result of my trademark office cases.

Best regards,

Scott Smith
916-453-8611

David J. Cook wrote:
See you in court
Sent from my Verizon Wireless BlackBerry

From: Scott Smith <scott@bizstarz.com>

Date: Tue, 27 Dec 2011 23:33:58 -0800
To: <cook@squeezebloodfromturnip.com>
ReplyTo: scott@bizstarz.com
Cc: <kjen@cookcollectionattorneys.com>
Subject: Smith vs Cook, TTAB cases

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1. your t-shirt sales (or giveaways)
2. names of persons or organizations that have purchased (or have been given) a "squeezeblood" t-shirt, and when
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6. the squeezeblood mark not being used for your collections services
7. the Cook mark being substantially and exclusively used by you in commerce for at least five years
8. the Cook mark acquiring secondary meaning and being distinctive to you
9. you policing the Cook mark (i.e. cease-and-desist letters to **Cook Legal Services, LLC** of Atlanta)
10. the Cook surname not being shared by multiple individuals and attorneys in multiple U.S. states and cities
11. no other person, firm, corporation, or association not having the right to use the Cook mark in commerce for "legal services"

However, I am very confident about my cases. So your efforts to threaten and intimidate me into dismissing my cases are not only unprofessional, they wreak of desperation.

You're also making the potentially very costly mistake of thinking I am your trademark "problem." Actually, your trademark problems (plural) are numerous, extend well beyond me, and were caused by you, not me. Your trademark problems include:

1. the numerous attorneys and law firms with the surname "Cook" who are now finding out about your claims of having exclusive rights to the Cook surname for "legal services"
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4. the many reporters that are now finding out about your scandalous squeezeblood mark, and your outrageous claim that no one else can use the Cook surname for legal services, except you

In other words, unless you do the wise thing and agree to expressly abandon your ill-gotten trademarks, you will soon be facing serious legal attacks from numerous attorneys and organizations over your trademarks. So even if you are somehow able to convince the trademark office to grant you summary judgments against all of my allegations, and against both cases, you will still be facing numerous (and much better resourced) legal attacks from many others if you refuse to do the right thing and expressly abandon your highly controversial and improper trademarks.

Hope this info helps. Let me know if you have any questions or are willing to expressly abandon your trademarks.

Best regards,

Scott Smith
916-453-8611

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5714 Folsom Blvd, Suite 140
Sacramento, CA 95819 (USA)
Ph: 916.453.8611 • Fax: 916.453.1103

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Note: Due to Entrepreneur magazine's aggressive efforts to monopolize the word "entrepreneur," Scott Smith's former PR firm for entrepreneurs, "EntrepreneurPR," was forced to cease use of its name in 2000 and again in 2003 (despite a unanimous February 2002 ruling by the 9th U.S. Circuit Court of Appeals, that Entrepreneur magazine's trademark is "weak" and that it does not have extensive rights to the word "entrepreneur.").

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EXHIBIT "D"

David J. Cook

From: Scott Smith [scott@bizstarz.com]
Sent: Thursday, December 29, 2011 2:27 PM
To: David J. Cook
Cc: cook@squeezebloodfromturnip.com; kjen@cookcollectionattorneys.com; perkiss@cookcollectionattorneys.com; dunn@cookcollectionattorneys.com; baron@cookcollectionattorneys.com; Mgorelnik@kilpatricktownsend.com
Subject: Re: Smith vs. Cook, TTAB cases

David,

The more you learn about trademark law and talk to trademark attorneys, the more you should realize that you're fighting an expensive and time-consuming battle over trademarks you're likely going to lose anyway. I of course have bigger fish to fry than trademarks that are on life support. So I am willing to withdraw my cases against your trademarks if you agree to abandon them and to provide reasonable compensation for my time, etc.

This offer expires 3pm Pacific, Monday, December 31st.

Be aware that if you refuse to abandon your ill-gotten trademarks, I will proceed aggressively. Including appeals to the federal circuit or district court if necessary, and a media relations campaign to bring attention to the allegations against your trademarks.

Thank you.

Scott
916-453-8611

David J. Cook wrote:
Mr. Smith,

Whether we respond or do not respond is not an admission. The fact that we decline to "deny" anything does convert whatever statements you utter into an admission. We are not going to dignify, or elevate to discourse, any of your claims, demands, allegations or accusations.

I will attach this email to our motions. Don't hesitate in you stream of unilateral communications.

From: Scott Smith [mailto:scott@bizstarz.com]
Sent: Wednesday, December 28, 2011 3:59 PM
To: David J. Cook
Cc: cook@squeezebloodfromturnip.com; kjen@cookcollectionattorneys.com; perkiss@cookcollectionattorneys.com; dunn@cookcollectionattorneys.com; baron@cookcollectionattorneys.com
Subject: Re: Smith vs Cook, TTAB cases

David,

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And good luck trying to prove in your motion that no genuine issues of material fact in dispute exist, and that you are entitled to judgment as a matter of law (and in a light most favorable to the nonmoving party, me).

Thank you.

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You of course may continue to try and mislead people about my successful attacks against EMI's *fraudulent* expo marks, but I will do my best to make sure people know that you are intentionally trying to mislead them. I understand that you're probably too stubborn and emotional to do so, but if you are a wise and rational person, you will abandon your fraudulent marks. No matter what happens with my cases, they are permanently linked to your trademarks and will always be available for the world to see, particularly anyone you unwisely go after claiming superior trademark rights against.

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8. the Cook mark acquiring secondary meaning and being distinctive to you
9. you policing the Cook mark (i.e. cease-and-desist letters to **Cook Legal Services, LLC** of Atlanta)
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11. no other person, firm, corporation, or association not having the right to use the Cook mark in commerce for "legal services"

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allegations, and against both cases, you will still be facing numerous (and much better resourced) legal attacks from many others if you refuse to do the right thing and expressly abandon your highly controversial and improper trademarks.

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Best regards,

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EXHIBIT "E"

David J. Cook

From: Scott Smith [scott@bizstarz.com]
Sent: Sunday, January 01, 2012 5:09 PM
To: cook@squeezebloodfromturnip.com
Cc: baron@cookcollectionattorneys.com; mbaron@cookcollectionattorneys.com
Subject: Re: Smith vs. Cook, TTAB cases

David, as a reminder, what I think is a generous settlement offer, **expires 3pm Pacific, Mon, Dec 31st.**

I know this is an offer most trademark attorneys would highly recommend a client in your position to take. But based on your highly charged comments and actions so far, you're taking this too personally to act rationally, like attorneys often do when they choose or are forced to represent themselves.

You're apparently determined to waste significant amounts of time and money defending improper marks that are likely to be cancelled anyway, and I doubt have much if any real value. Cook Collection Attorneys is your "house mark," not "Cook." And your "SqueezeBlood" mark is not only scandalous and generic, you can use (abuse) it with or without a trademark. Plus, besides using it to harass and intimidate people you're trying to seize assets from, or to attract vindictive and unreasonable clients such as EMI, have you made even a nickel selling your alleged SqueezeBlood t-shirts? I highly doubt it. Even if you gave some away, I can't imagine anyone with good intentions would be caught dead wearing one. That's why I believe even if you have distributed any SqueezeBlood t-shirts, it's only been to solicit vindictive and unreasonable clients (or to harass and intimidate people you're trying to seize assets from), which you can do with or without the trademark.

Do you really want to risk having your client recruiting strategies and activities surface because of avoidable litigation and become public record? Are really willing and able to spend all the time and money it takes to police your trademarks, especially improper marks that wouldn't survive even their first good counterattack?

It seems that you're fighting such a losing battle because you're very stubborn and are taking everything too personally. You're surely not making good legal or business sense, or following the advice of a well-reasoned trademark attorney.

Thank you.

Scott Smith
916-453-8611

David J. Cook wrote:
Declined.

From: Scott Smith [mailto:scott@bizstarz.com]
Sent: Thursday, December 29, 2011 2:27 PM
To: David J. Cook
Cc: cook@squeezebloodfromturnip.com; kjen@cookcollectionattorneys.com; perkiss@cookcollectionattorneys.com; dunn@cookcollectionattorneys.com; baron@cookcollectionattorneys.com; Mgorelnik@kilpatricktownsend.com
Subject: Re: Smith vs. Cook, TTAB cases

David,

The more you learn about trademark law and talk to trademark attorneys, the more you should realize that you're fighting an expensive and time-consuming battle over trademarks you're likely going to lose anyway. I of

course have bigger fish to fry than trademarks that are on life support. So I am willing to withdraw my cases against your trademarks if you agree to abandon them and to provide reasonable compensation for my time, etc.

This offer expires 3pm Pacific, Monday, December 31st.

Be aware that if you refuse to abandon your ill-gotten trademarks, I will proceed aggressively. Including appeals to the federal circuit or district court if necessary, and a media relations campaign to bring attention to the allegations against your trademarks.

Thank you.

Scott
916-453-8611

David J. Cook wrote:
Mr. Smith,

Whether we respond or do not respond is not an admission. The fact that we decline to "deny" anything does convert whatever statements you utter into an admission. We are not going to dignify, or elevate to discourse, any of your claims, demands, allegations or accusations.

I will attach this email to our motions. Don't hesitate in you stream of unilateral communications.

From: Scott Smith [<mailto:scott@bizstarz.com>]
Sent: Wednesday, December 28, 2011 3:59 PM
To: David J. Cook
Cc: cook@squeezebloodfromturnip.com; kjen@cookcollectionattorneys.com; perkiss@cookcollectionattorneys.com; dunn@cookcollectionattorneys.com; baron@cookcollectionattorneys.com
Subject: Re: Smith vs Cook, TTAB cases

David,

Thanks for the heads up. I believe that including my emails in your motion will actually help me. Also, you noticeably were NOT able to deny that due to my very strong cases against EMI's fraudulent expo marks, EMI decided to abandon them.

And good luck trying to prove in your motion that no genuine issues of material fact in dispute exist, and that you are entitled to judgment as a matter of law (and in a light most favorable to the nonmoving party, me).

Thank you.

Scott Smith
916-453-8611

David J. Cook wrote:
Mr. Smith,

I am adding this email to our pending motion.

David J. Cook

From: Scott Smith [<mailto:scott@bizstarz.com>]
Sent: Wednesday, December 28, 2011 2:50 PM

To: cook@squeezebloodfromturnip.com

Cc: kjen@cookcollectionattorneys.com; perkiss@cookcollectionattorneys.com; dunn@cookcollectionattorneys.com; baron@cookcollectionattorneys.com

Subject: Re: Smith vs Cook, TTAB cases

David,

For the record, and as you surely know from your communications with EMI, they DID abandon their *fraudulent* Entrepreneur Expo and Entrepreneur magazine Small Business Expo marks as a direct result of my trademark office cases. EMI intentionally failed to renew their Small Business Expo mark after I filed my case, so it was automatically cancelled by the trademark office. And EMI abandoned their claims to the Entrepreneur Expo mark soon after I filed my most recent case, and have ceased including it as one of their marks in their new cases.

You of course may continue to try and mislead people about my successful attacks against EMI's *fraudulent* expo marks, but I will do my best to make sure people know that you are intentionally trying to mislead them. I understand that you're probably too stubborn and emotional to do so, but if you are a wise and rational person, you will abandon your fraudulent marks. No matter what happens with my cases, they are permanently linked to your trademarks and will always be available for the world to see, particularly anyone you unwisely go after claiming superior trademark rights against.

Hope this info helps. Let me know if you have any questions or dispute that EMI abandoned their expo marks, and did so as a direct result of my trademark office cases.

Best regards,

Scott Smith
916-453-8611

David J. Cook wrote:

See you in court

Sent from my Verizon Wireless BlackBerry

From: Scott Smith <scott@bizstarz.com>

Date: Tue, 27 Dec 2011 23:33:58 -0800

To: <cook@squeezebloodfromturnip.com>

ReplyTo: scott@bizstarz.com

Cc: <kjen@cookcollectionattorneys.com>

Subject: Smith vs Cook, TTAB cases

David,

Your letter dated December 21, 2011 suggests that you have retained legal counsel to help defend against my trademark case(s) against you and your firm. If so, your attorney is encouraged to contact me if they want to discuss my cases or possible solutions.

The information and materials you recently sent me seem to conflict with your previous claims to the trademark office. But you or your attorney are welcome to send me any information that you believe disproves any of my allegations. If you can provide convincing enough proof, I will consider withdrawing the relevant allegations, or if warranted, both of my cases before the start of the discovery periods. But if you are unable to provide such information, I will continue to believe that's because such evidence does NOT exist.

For example, feel free to send me alleged evidence of:

1. your t-shirt sales (or giveaways)
2. names of persons or organizations that have purchased (or have been given) a "squeezeblood" t-shirt, and when
3. your plans to use the "squeezeblood" mark as claimed
4. the squeezeblood mark not being immoral or scandalous to a substantial composite of the general public
5. you policing the squeezeblood mark (i.e. cease-and-desist letters to the seller of the "**YOU CANNOT SQUEEZE BLOOD OUT OF A TURNIP**" t-shirts available for sale on cafePress.com)
6. the squeezeblood mark not being used for your collections services
7. the Cook mark being substantially and exclusively used by you in commerce for at least five years
8. the Cook mark acquiring secondary meaning and being distinctive to you
9. you policing the Cook mark (i.e. cease-and-desist letters to **Cook Legal Services, LLC** of Atlanta)
10. the Cook surname not being shared by multiple individuals and attorneys in multiple U.S. states and cities
11. no other person, firm, corporation, or association not having the right to use the Cook mark in commerce for "legal services"

However, I am very confident about my cases. So your efforts to threaten and intimidate me into dismissing my cases are not only unprofessional, they are a waste of desperation.

You're also making the potentially very costly mistake of thinking I am your trademark "problem." Actually, your trademark problems (plural) are numerous, extend well beyond me, and were caused by you, not me. Your trademark problems include:

1. the numerous attorneys and law firms with the surname "Cook" who are now finding out about your claims of having exclusive rights to the Cook surname for "legal services"
2. the debtor attorneys, agencies and organizations that are now finding out about your highly offensive squeezeblood mark
3. the fact that the trademark office (and most people) will agree with most if not all of the allegations contained in my cases
4. the many reporters that are now finding out about your scandalous squeezeblood mark, and your outrageous claim that no one else can use the Cook surname for legal services, except you

In other words, unless you do the wise thing and agree to expressly abandon your ill-gotten trademarks, you will soon be facing serious legal attacks from numerous attorneys and organizations over your trademarks. So even if you are somehow able to convince the trademark office to grant you summary judgments against all of my allegations, and against both cases, you will still be facing numerous (and much better resourced) legal attacks from many others if you refuse to do the right thing and expressly abandon your highly controversial and improper trademarks.

Hope this info helps. Let me know if you have any questions or are willing to expressly abandon your trademarks.

Best regards,

Scott Smith
916-453-8611

--
Scott Smith, President

BizStarz
5714 Folsom Blvd, Suite 140
Sacramento, CA 95819 (USA)
Ph: 916.453.8611 • Fax: 916.453.1103

BizStarz provides cost-effective public relations services to innovative small business entrepreneurs. BizStarz' clients and services have been featured by a variety of leading media organizations including CNN, BusinessWeek and The Wall Street Journal.

Note: Due to Entrepreneur magazine's aggressive efforts to monopolize the word "entrepreneur," Scott Smith's former PR firm for entrepreneurs, "EntrepreneurPR," was forced to cease use of its name in 2000 and again in 2003 (despite a unanimous February 2002 ruling by the 9th U.S. Circuit Court of Appeals, that Entrepreneur magazine's trademark is "weak" and that it does not have extensive rights to the word "entrepreneur.").

--



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Sacramento, CA 95819 (USA)
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Note: Due to *Entrepreneur* magazine's efforts to monopolize the word "entrepreneur," Scott Smith's former PR firm for entrepreneurs, "EntrepreneurPR," was forced to cease use of the word entrepreneur, despite a unanimous 9th U.S. Circuit Court of Appeals ruling that Entrepreneur magazine's trademark is "weak."

EXHIBIT “F”

David J. Cook

From: Scott Smith [scott@bizstarz.com]
Sent: Friday, January 06, 2012 3:19 PM
To: cook@squeezebloodfromturnip.com
Cc: baron@cookcollectionattorneys.com
Subject: Smith vs Cook, TTAB

David,

I've notified scores of attorneys throughout the country that use the "Cook" surname about my cases against your improper trademarks. Many of them specialize in trademark or bankruptcy law, so you can imagine what they intend to do about your "Cook" and "SqueezeBlood" trademarks.

Not a single "Cook" attorney has told me that they've received a cease-and-desist letter from you. This of course bolsters my claim that you are not brave or foolish enough to police your trademarks because you know they are improper and would likely be cancelled with a good counterattack. This also highlights how unreasonable your fight is against my cases. You aren't willing or able to police your marks, but yet you're determined to fight tooth and nail against my cases. You even repeatedly spurned my generous settlement offer that would have saved both of us significant amounts of time and money fighting over improper marks that are likely to be cancelled anyway.

To help get the word out about my case against your scandalous "SqueezeBlood" trademark, I registered the domain name "SqueezeBloodFromATurnip.info." Besides using it as a domain name, I'm also considering imprinting SqueezeBloodFromATurnip.info on t-shirts, caps, and other clothing apparel.

Thank you.

Scott Smith
916-453-8611

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Scott Smith, President
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Sacramento, CA 95819 (USA)
Ph: 916.453.8611 • Fax: 916.453.1103

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1 **CERTIFICATE OF SERVICE**

2 SCOTT R. SMITH
3 5714 Folsom Blvd., Suite 140
4 Sacramento, CA 95819

5 I declare:

6 I am employed in the County of San Francisco, California. I am over the age of eighteen
(18) years and not a party to the within cause. My business address is 165 Fell Street, San
Francisco, CA 94102. On the date set forth below, I served the attached:

7 **DECLARATION OF DAVID J. COOK, ESQ. IN SUPPORT OF SECOND MOTION**
8 **FOR ENTRY OF PREFILING ORDER**

9 on the above-named person(s) by:

10 XXX (BY MAIL) Placing a true copy thereof, enclosed in a sealed envelope with postage
thereon fully prepaid, in the United States mail at San Francisco, California, addressed to the
person(s) served above.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed on January 30, 2012 at San Francisco, California.

13 
14 _____
15 Matthew Baron
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